

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2003-674

October 20, 2003

BANGOR HYDRO-ELECTRIC COMPANY  
Request for Waiver of Chapter 395  
Sections 6(A)(2), 6(B)(4) and Section 7(A)  
of the Commission's Rules Concerning the  
application of the "Development Policy" to  
Persons or Customers Causing  
Construction of Privately-Owned Line  
Extensions or Company-Owned Line  
Extensions in Developments for the  
Purpose of Serving Their Parcel Within the  
Development

ORDER GRANTING WAIVER  
OF SECTIONS 6(A)(2), 6(B)(4)  
7(A) AND 9(A)

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

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**I. SUMMARY**

Pursuant to authority delegated to me as the Director of Technical Analysis by Section 10 of Chapter 395 (Construction Standards and Ownership and Cost Allocation Rules for Electric Distribution Line Extensions), to waive provisions of Chapter 395 upon a finding of good cause, I hereby find good cause exists for the circumstances described by Bangor Hydro-Electric Company in its request and therefore waive Chapter 395, Sections 6(A)(2), 6(B)(4), 7(A) and the exception for developments contained in Section 9(A). These provisions govern line extension policy within "developments," a term defined in the Rule at Section 1(C).

**II. DISCUSSION AND WAIVER**

Section 10 of Chapter 395 allows either the Commission or the Director of Technical Analysis to waive any of the requirements of the Chapter that are not required by statute, provided that the waiver is not inconsistent with the purpose of Chapter 395 or Title 35-A.

Sections 6(A)(2) requires utility ownership of a line extension located in a development if the line "delivers power to any structures within the development." Section 6(B)(4) is complementary: it states that "a person who causes the construction of a privately-constructed line extension that serves a development may own the line extension until the line extension delivers power to any structure." Section 7(A) states that the ownership of a line extension located in a development must be transferred to the T&D utility prior to energization of the line.

These three provisions all differ from the policy under the Rule that is applicable to line extensions that serve only a single customer and are not located in a development. Under those circumstances, Section 6(B) of the Rule specifically allows a single customer to own the line extension as long as it serves only that customer. See also Sections 6(C) (requiring customer maintenance), 7(A) (optional transfer of line to T&D utility) and 7(B) (mandatory transfer of ownership to T&D utility when second customer attaches to line).

In Addition, Section 9(A) of the Rule requires that line extension costs be allocated among earlier and later attachers to the line *except* when the line extension is located in development.

In support of its waiver request, Bangor Hydro-Electric Company (BHE) states that within BHE's service territory, developers are not required to provide primary electric service facilities to their developments.<sup>1</sup> In developments where the developer has not provided primary electric service prior to the sale of land or buildings by the developer, the first customer or customers entering the development will need to construct or contract to construct a line extension. In other words, the location may qualify as a development under the Rule because it previously was owned by a developer who subdivided and sold two or more individual plots. However, underlying the separate policies in the Rule for line extensions in developments is the assumption the developer caused the line extension to be built has no legitimate need to retain ownership (once an initial customer is connected) and has an opportunity to recover the costs. When the initial customer(s) build(s) the line, those assumptions are invalid.

BHE asserts that application of the ownership provisions in Sections 6 and 7, which restrict private ownership in a development, is unfair to customers located in a development because, unlike customers who build a line extension outside a development, they do not have the right to own it. Ownership by a private customer is perceived as an advantage (and allowed by the Rule) because those single customers do not have to reimburse the T&D utility for the federal and state income taxes the utility must pay on the "contribution in aid of construction" (CIAC) when a customer turns over a line extension to the utility. (By retaining ownership, customers do incur a maintenance burden, however.)

More importantly, customers who build a line that happens to be located in a development would not be eligible to receive partial reimbursement for the costs of the line by subsequent customers who connect to the line under the provisions of Section 9 of Chapter 395, which allocates those costs among original and subsequent attachers. The rationale for excluding developments from the provisions of Section 9 is that developers have an opportunity to recover the cost of building a line extension. *Public Utilities Commission, Construction Standards and Ownership and Cost Allocation Rules for Electric Distribution Line Extensions (Chapter 395)*, Docket No. 2001-701, Order

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<sup>1</sup> There is no such requirement in the Rule or in BHE's Terms and Conditions. We are not aware of any such requirement for any other T&D utility in Maine.

Adopting Rule (January 29, 2002) at 43-44. That rationale does not apply if the initial customers have had to build the line extension. Indeed, if the initial customers must themselves finance the cost of a line extension directly (rather than indirectly paying for it in the cost of the lot or building sold to them by a developer) they are in the exact same position as initial customers who pay for a line extension on land that is not defined as a development.

BHE contends that as long as the customer causing the construction of a line extension to serve a parcel within a development is not the developer, the line extension should be governed by the provisions of Chapter 395 that apply to line extensions built to serve non-development parcels.

For the reasons described above, I find that good cause exists to waive the ownership restrictions contained in Sections 6(A)(2), 6(B)(4) and Section 7(A) of Chapter 385 as applied to the circumstance described in this Order, i.e., a line located in a development (as defined by Chapter 395, § 1(C)) that is built by or paid for directly by an initial customer rather than by the developer. When this circumstance exists, Bangor Hydro shall apply the policies in Chapter 395 that apply to line extensions located on property that is not within a development. See, e.g., Section 6(A)(1) and (3), all of Section 6(B) except paragraph (4), Section 6(C), and all of Section 7 except for subsection A.

In addition, the exception contained in Section 9(A) that excludes application of the provisions of Section 9 (Allocation of Line Extension Costs Among Customers) shall not apply. A line extension located in a development that is built by or paid for directly by an initial customer, rather than by the developer, shall be subject to the allocation, reallocation and payment provisions of Section 9 to the same extent as a line extension that is not located in a development.

Dated at Augusta, Maine, this 20<sup>th</sup> day of October 2003.

BY ORDER OF THE DIRECTOR OF  
TECHNICAL ANALYSIS

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Faith Huntington  
Acting Director of Technical Analysis

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

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